IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 195 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

KADODARA PAPER IND. PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 195 of 1994
MR AKIL KURESHI WITH MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal has referred the following question at the instance of the Commissioner for assessment years 1981-82, 1982-83 and 1984-85 :-

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in law in holding that set off or unabsorbed depreciation allowance has to be allowed whether there is business income or not, and is to be allowed against any other head of income and assessee is allowed to set off of the same against the rental income which is derived by the Company by letting on hire/lease its entire business assets and which been assessed as `income from other sources' ?"

2. We have heard Mr Akil Kureshi, learned standing counsel for the revenue. Though served, none appears for the assessee. Mr Kureshi fairly submitted that the question is concluded by decision of this Court as well as the Apex Court in the case of CIT vs. Deepak Textiles Industries Ltd., 210 ITR 1029 and in the case of CIT vs. Virmani Industries Pvt. Ltd., 216 ITR 607.

3. In light of the ratio of the aforesaid decision, we hold that the Tribunal was right in law in holding that unabsorbed depreciation brought forward from earlier years was allowable against the income of the current year even if there is no business income. The question is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-